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C O N F I D E N T I A L SECTION 01 OF 02 PANAMA 002533

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SUBJECT: PANAMA'S SUPREME COURT CHIEF JUSTICE CESAR  
PEREIRA: SHOULD HE STAY OR SHOULD HE GO?

REF: A. PANAMA 1274  
[B. PANAMA 823](#)  
[C. PANAMA 200](#)

Classified By: Ambassador Linda E. Watt for reasons 1.4 (b) & (d)

THE CONSTITUTION OR THE LAW - WHICH COMES FIRST?  
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[1](#)1. (C) Controversy continues to swirl around the issue of whether Panama's Supreme Court Chief Justice Cesar PEREIRA Burgos must step down after turning 75 on September 23, 2004. Comptroller General Alvin Weeden and numerous Pereira opponents have insisted that Pereira should step down from the Supreme Court. They rest their claims on a 1998 law known as the "Ley Faundes," that requires all public officials to retire upon turning age 75. On the other hand, Pereira himself and many others note that Article 200 of Panama's constitution grants a ten-year term to Supreme Court Magistrates without mention of age. No law can trump the constitution. Many Panamanians who consider Pereira a corrupted troglodyte would love to see him go, as would President Torrijos' Democratic Revolutionary Party (PRD), since Pereira is a Moscoso appointee. Representatives of the Executive Branch recently punted the issue to Solicitor General Alma Montenegro de Fletcher (a founding PRD member), requesting that she opine on the applicability of the Ley Faundes to Pereira. Fletcher has stated that the Ley Faundes should apply to all public servants, without exception. But Pereira hasn't shown any signs of leaving. At the same time, contrary to Montenegro, the Labor Committee of the Legislative Assembly is discussing reforming the law to exclude public officials with a constitutionally-mandated term. Meanwhile, the presidency of the Supreme Court, one of the most important positions in the Panamanian government, and one of the most coveted prizes of political patronage, hangs in the balance.

REROUTING THE PROBLEM  
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[1](#)2. (C) Opponents claim that the Torrijos administration's posturing on the separation of powers is insincere. No one contests that Pereira's exit from the Supreme Court could pave the way for a PRD appointment, allowing President Torrijos to tip the balance of the Court in favor of his party. (Pereira is one of five Moscoso appointees on the nine-member Supreme Court.) Minister of the Presidency Ubaldo Real deferred to the Solicitor General when queried by the press on the Torrijos administration's position regarding the applicability of the "Ley Faundes" to Pereira. Granted, say Torrijos' opponents, Alma Montenegro de Fletcher has a positive reputation for objectivity, but she also is a founding member of the President's political party.

[1](#)3. (SBU) The entire debate may end up without result. Popular Party legislator Jorge Hernan Rubio, elected as Second Vice President Ruben Arosemena's alternate, has proposed revising the "Ley Faundes." Another Popular Party leader, Presidential Goals Secretary Ebrahim Asvat already pointed out that since the constitution imposes no limit on the age of Supreme Court appointees, thus, there can logically be no maximum age either, but clarified that the judicial branch has the final say. Legislator Rubio's proposal would clarify that the "Ley Faundes" does not apply to public officials whose term is fixed by the constitution.

COMMENT: THEN AND NOW  
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[1](#)4. (C) As applied in the past, the "Ley Faundes" (Law 61 of

1998) seems more a tool of political expediency than anything else. Legal scholars argue that even the law's namesake, former Supreme Court Magistrate Jose Faundes, who had a penchant for the ponies and a known drinking problem, left because he was sick, not in compliance with the law. Marine biologist Carlos Arellano Lennox was the most recent case study even though President Moscoso appointed him as Director of Panama's Environmental Authority (ANAM) well after his 75th birthday. Rumor has it that Moscoso chose to remove Arellano after only three weeks on the job after he refused to approve a shoddy environmental impact assessment of her controversial "Camino Ecologico" road project that was to be built through a national park in Panama's westernmost province of Chiriqui.

15. (C) La Prensa published a scathing editorial on October 10 by its founder I. Roberto Eisenmann, Jr. on the Supreme Court. Eisenmann states unequivocally that Magistrate Pereira must obey the law pointing out that Pereira himself has imposed on others in the past who challenged its constitutionality. To many critics of Panama's judicial system, revising the "Ley Faundes" as Legislator Rubio has proposed would send the wrong message, leaving Magistrate Pereira and his colleagues "above the law" while civil society clamors to reduce the privileges and immunities of top public officials.

16. (C) Since President Torrijos took office on September 1, Panamanians have speculated about how he would get rid of Moscoso's least-liked and most criticized appointees, including Cesar Pereira, Winston Spadafora, and Alberto Cigarruista. (NOTE: An allegation that PRD legislators were paid off to approve the Spadafora and Cigarruista appointments has not been proven. END NOTE.) The entire Torrijos administration has been very careful not to overtly violate the separation of powers despite the de facto synergy between the PRD executive and the PRD legislative majority. No matter whether Pereira stays or goes, to boost the rock-bottom credibility of Panama's highest court, President Torrijos must appoint Supreme Court magistrates who are above reproach. Assuming that Pereira will stay, as he shows every sign of doing, Magistrate Arturo Hoyos' December 2004 departure when his ten-year term ends will be an early test of Torrijos' resolve to make good his campaign pledge of depoliticizing Panama's highest court.

17. (C) In private conversations with the Ambassador, President Torrijos and senior members of his cabinet have repeatedly expressed their high level of frustration with the Supreme Court. The President is clearly considering options as to how to ease out at least some of the most controversial justices. As the new government struggles to investigate the well-covered tracks of Moscoso administration corruption, the tawdry state of the Supreme Court impedes serious judicial consideration of these and other corruption cases.

WATT